Supreme Court, U.S.
FILED
JUL 26 1995
OFFICE OF THE CLERK

(3)

No. 95-18

In The

Supreme Court of the United States

October Term, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATIONS COMMISSION OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

RESPONDENT'S APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MARY ANN B. OAKLEY
Suite 721
315 W. Ponce de Leon Avenue
Decatur, GA 30030-2441
(404) 378-5111

Counsel for Respondent

July 26, 1995

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

INDEX TO APPENDIX

Article VI, §VII, ¶VI, VII and VIII, 1983 Georgia Constitution .....App. 1

Rules of the Judicial Qualifications Commission, as amended (effective March 1, 1994) .....App. 5

Georgia Code of Judicial Conduct (effective Jan. 1, 1994) .....App. 40

Notice of Formal Proceedings .....App. 75

Response of the Judicial Qualifications Commission to Petitioner's Motion for Continuance Filed in Supreme Court of Georgia .....App. 79

Excerpt from Pre-Hearing Conference Transcript App. 105

Excerpt from Formal Hearing Transcript Re: Oral Motion for Continuance .....App. 115

Paragraph VI. Judicial Qualifications Commission; power; composition.

The power to discipline, remove, and cause involuntary retirement of judges shall be vested in the Judicial Qualifications Commission. It shall consist of seven members, as follows:

(1) Two judges of any court of record, selected by the Supreme Court;

(2) Three members of the State Bar of Georgia who shall have been active status members of the state bar for at least ten years and who shall be elected by the board of governors of the state bar; and

(3) Two citizens, neither of whom shall be a member of the state bar, who shall be appointed by the Governor.

Paragraph VII. Discipline, removal, and involuntary retirement of judges.

(a) Any judge may be removed, suspended, or otherwise disciplined for willful misconduct in office, or for willful and persistent failure to perform the duties of office, or for habitual intemperance, or for conviction of a crime involving moral turpitude, or for conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of

office. The Supreme Court shall adopt rules of implementation.

(b)(1) Upon indictment for a felony by a grand jury of this state or by a grand jury of the United States of any judge, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Judicial Qualifications Commission. The commission shall, subject to subparagraph (b)(2) of this Paragraph, review the indictment, and, if it determines that the indictment relates to and adversely affects the administration of the office of the indicted judge and that the rights and interests of the public are adversely affected thereby, the commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he was suspended. While a judge is suspended under this subparagraph and until initial conviction by the trial court, the judge shall continue to receive the compensation from his office. After initial conviction by the trial court, the judge shall not be entitled to receive the compensation from his office. If the judge is reinstated to office, he shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that

office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof.

(2) The commission shall not review the indictment for a period of 14 days from the day the indictment is received. This period of time may be extended by the commission. During this period of time, the indicted judge may, in writing, authorize the commission to suspend him from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(3) After any suspension is imposed under this subparagraph, the suspended judge may petition the commission for a review. If the commission determines that the judge should no longer be suspended, he shall immediately be reinstated to office.

(4) The findings and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The findings and records of the commission shall not be open to the public.

(5) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(6) If a judge who is suspended from office under the provisions of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he is not so tried based on a continuance granted upon a motion made only by the defendant.

(c) Upon initial conviction of any judge for any felony in a trial court of this state or the United States, regardless of whether the judge has been suspended previously under subparagraph (b) of this Paragraph, such judge shall be immediately and without further action suspended from office. While a judge is suspended from office under this subparagraph, he shall not be entitled to receive the compensation from his office. If the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he was suspended and shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof. The provisions of this subparagraph shall not apply to any conviction rendered prior to January 1, 1987.

Paragraph VIII. Due process; review by Supreme Court.

No action shall be taken against a judge except after hearing and in accordance with due process of law. No removal or involuntary retirement shall occur except upon order of the Supreme Court after review.

Rules of the Judicial Qualifications Commission

The Constitution of the State of Georgia of 1983 provides that "the Supreme Court shall adopt rules of implementation" for discipline, removal, and involuntary retirement of judges (OCGA Article VI, §VII, ¶VII).

The following are rules adopted by the Supreme Court governing the functions of the Judicial Qualifications Commission:

Definition of Sanctions

The following working definition for disciplinary sanctions shall apply in all proceedings of the Commission, both formal and informal:

(a) *Admonition*: A private communication reminding a judge of ethical responsibilities and giving a gentle or friendly warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.

(b) *Private Reprimand:* A private communication that declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.

(c) *Public Reprimand:* A public communication administered by a judicial officer which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.

(d) *Censure:* A public declaration by the Supreme Court that a judge is guilty of misconduct that does not require removal from office.

(e) *Suspension:* A decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than a censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.

(f) *Removal:* A decision by the Supreme Court to remove a judge permanently from office for serious misconduct.

(g) *Retirement:* A decision by the Supreme Court to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

RULE 1

Members and Their Terms

(a) The power to discipline, remove and cause involuntary retirement of judges is vested in the Judicial Qualifications Commission, which consists of seven members, as follows:

(1) Two judges of any court of record, selected by the Supreme Court;

(2) Three members of the State Bar of Georgia, who have been active status members of the State Bar for at least ten years, and who shall be elected by the Board of Governors of the State Bar, and

(3) Two citizens, neither of whom shall be members of the State Bar, who shall be appointed by the Governor (Article VI, §VII, ¶VI, Constitution of Georgia of 1983).

(b) All member of the Commission shall serve for terms of four years each and until their successors are elected or appointed and are qualified. Whenever any member ceases to hold the office or to possess the qualifications which entitle the member to be appointed a member, the member's membership shall terminate, and the appointing authority shall select a successor for the unexpired term. No member of the Commission shall receive any compensation for services, but shall be allowed necessary expenses for travel, board and lodging incurred in the performance of Commission duties. No member of the Commission, except judges, shall hold any other public office or be eligible for appointment to a State judiciary office while holding membership on the Commission. No member shall hold office in any political party or organization. No act of the Commission shall be valid unless concurred in by a majority of its membership.

(c) A vacancy shall occur when a Commission member becomes unable to continue service for any reason. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the appropriate authority. If a vacancy is not filled at the end of sixty (60) days, the Commission shall appoint from the category to be represented a member who shall serve until such time as an appointment shall be made by the appropriate authority.

(d) A temporary vacancy shall occur when a Commission member becomes unable to attend a formal hearing

for any reason. The Commission is authorized but not required to appoint a former member from the category to substitute at such formal hearing and subsequent action related to the hearing in lieu of such non-serving member.

RULE 2

Officers and Their Duties

(a) The Commission shall select from its members a Chairperson, a Vice Chairperson, and such other officers as the Commission may consider proper and helpful in carrying out its functions, who shall serve at the pleasure of the Commission. A member may be elected to more than one office.

(b) The Chairperson shall preside at all general meetings of the Commission as well as at formal hearings concerning the conduct or disability of a judge. If the Chairperson is not a lawyer, the Chairperson shall appoint a member of the Commission who is a lawyer to preside at any hearing held by the Commission. The Chairperson shall be responsible for the custody and safekeeping of all the records of the Commission, shall promptly furnish to members of the Commission copies of all complaints, notices, answers and other documents filed in connection with proceedings before the Commission, and shall perform such other duties as are indicated in these rules or as are customarily performed by a Chairperson. The Chairperson shall also annually make a report to the Supreme Court of the actions of the Commission but shall not set forth therein the name of or

otherwise identify a judge with respect to matters which are confidential under the provisions of Rule 20.

(c) In the event the Chairperson is absent or is otherwise unable to attend a meeting or to perform the duties of office at a particular time, those duties shall be performed by the Vice Chairperson, and in the absence of the Vice Chairperson, by a member of the Commission designated by those present.

(d) The Director or, if the Director is absent, such member of the Commission as the Chairperson shall designate, shall have the duty of recording in the minute book, as a permanent record of the Commission, the action of the Commission at each meeting.

(e) The Commission may, at its discretion, designate a Director who shall serve at the pleasure of the Commission and shall have such duties, powers and authority as may be, from time to time, fixed, determined or delegated by the Commission. The Director may be authorized by the Commission to issue subpoenas on its behalf.

RULE 3

Meetings

(a) The Chairperson may, and upon the request of three members shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member by telephone or other means of the time and place of the meeting.

(b) Decisions by the Commission to conduct an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for

failing to respond to a subpoena of the Commission, issue a public statement, institute contempt proceedings against a person for violation of the confidentiality provisions of the rules, hold or not to hold a formal hearing, hear additional evidence, make a report to the Supreme Court recommending removal, other discipline or retirement of a judge, or deciding after a formal hearing not to make such a report, shall be made at a formal meeting of the Commission. Decisions with respect to other matters may be arrived at through communications between the members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.

(c) Four members of the Commission shall constitute a quorum for the transaction of business at any formal meeting or for the conduct of a formal hearing, and if a quorum is present at a meeting, the vote of a majority of those in attendance shall be considered the official action of the Commission, except that a vote of a majority of the members of the Commission shall be required for a recommendation of discipline to the Supreme Court.

RULE 4

Complaints – Investigations

(a) The Commission shall require that all complaints shall be made to it in writing and the Commission, when it considers it appropriate, may require that the same be verified. A complaint shall not be a pre-requisite to action by the Commission, but the Commission may act on its

own motion in those cases where the Commission considers it appropriate.

(b) Upon receiving a complaint or otherwise receiving information indicating that a judge may have been guilty of willful misconduct in office, or willful and persistent failure to perform the duties of a judge, or habitual intemperance, or conduct prejudicial to the administration of justice which brings the judicial office into disrepute, or that a judge may have a disability that seriously interferes with the performance of the judge's duties which is or is likely to become permanent, the Commission may make an initial inquiry of the judge for such written comments with respect to the matters involved as the judge may wish to make; and, with or without making such initial inquiry, and with or without notice or other information being given to the judge, as the Commission may consider best, the Commission may conduct an investigation of the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted and a hearing held. However, prior to any determination that a formal hearing will be held, the judge shall be sent a copy of the complaint or a synopsis of the matters to be or which have been investigated and the judge shall thereafter be given reasonable opportunity to make such statement to the Commission as the judge considers desirable. Such statement may be made, as the judge may elect, personally or by counsel, verbally or in writing, and may or may not be under oath. In exercising this right, the judge shall not have the right to call witnesses nor to confront nor cross-examine the person making the complaint or any person interviewed by the Commission or its duly authorized representative.

If, after being notified by the Commission, the judge does not respond within a reasonable time or within the time fixed by the Commission, the right to make such statement shall thereupon terminate. In making an investigation, the Commission may issue subpoenas for witnesses to appear before the Commission's representative for the purpose of making a sworn statement and may likewise issue subpoenas for the production of books, papers and other evidentiary matter which are pertinent to the inquiry.

(c) Whenever the Commission reaches the conclusion that a complaint fails to state, or the facts developed upon an initial inquiry to the judge or an investigation fail to show, any reason for the institution of disciplinary proceedings, the Commission shall so advise the complainant and at the same time shall inform the complainant of the confidentiality provisions of Rule 20. The Commission shall also so notify the judge, except that with respect to complaints which are rejected because they fail to state any grounds for disciplinary proceedings, the Commission may, but is not required to, advise the judge thereof.

(d) After receipt of a complaint or of information indicating that a judge may have been guilty of conduct which might warrant discipline, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge concerning

the subject matter of the inquiry and a satisfactory disposition thereof; and if the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. If such agreed disposition is made on the basis that it be made public, the Commission shall file a report of the disposition in the Supreme Court.

(e) The foregoing shall not be construed to mean that the Commission may not at any time entertain and act upon a proposal from a judge for disposition of any matter pending before the Commission concerning such a judge, provided that if such proposal is made after notice of formal hearing, and is found acceptable to the Commission, a report thereof shall be filed in the Supreme Court and such report shall not be considered confidential.

RULE 5

Institution of Formal Proceedings – Notice – Judge's Answer

(a) When after receiving a complaint or otherwise obtaining information concerning the conduct or physical or mental condition of a judge, the Commission has made such investigation of the complaint or information as the Commission considers needful and proper, and the judge has been given the opportunity to make a statement to the Commission as stated in Rule 4(b), the Commission concludes that a formal hearing should be held, the Commission shall issue, as promptly as possible, a written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against the

judge. The proceedings shall be entitled: "Before the Commission on Judicial Qualifications, Inquiry Concerning Judge ___."

(b) The notice shall specify the charges against the judge with sufficient fullness to enable the judge to understand the nature thereof and shall advise the judge of the right to file a written answer to the charges; and a copy of such notice shall be filed in the Supreme Court.

(c) Within thirty (30) days after service of the notice of formal proceedings, the judge shall file with the Commission an original and six (6) copies of a verified answer. The notice of formal proceedings and the answer shall constitute the pleadings. No further pleadings shall be filed, except by way of amendment as provided for in Rule 9.

RULE 6

Hearing Before Commission or a Special Master

Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall promptly order a hearing to be held before it concerning the removal, other discipline or retirement of the judge, or the Commission may request the Supreme Court to appoint a Special Master to hear and take evidence in such matter and to report thereon to the Commission. The Commission shall set a time and place for the hearing, and shall give notice thereof to the judge at least twenty (20) days before the date thereof.

RULE 7

Conduct of Hearing

(a) At the time and place set for the hearing, the Commission or the Special Master may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The proceedings at the hearing shall be reported by a qualified reporter.

(c) At the hearing before the Commission or a Special Master appointed by the Supreme Court, legal evidence only shall be received, and oral evidence shall be taken on oath or affirmation.

(d) The Chairperson or presiding member of the Commission, if the hearing is held before the Commission, or the Special Master appointed to conduct the hearing, shall administer oaths or affirmations to witnesses, rule on the admissibility of evidence, and otherwise direct the manner or order of proceedings as a judge of a court of record.

(e) The Rules of Evidence applicable to civil cases shall apply at all hearings before the Commission or the Special Master, and the standard of proof shall be clear and convincing evidence. In all such hearings, the burden of proof shall be upon the counsel for the Commission.

RULE 8

Rights of Judge in Connection with Hearing

(a) Within fifteen (15) days after such notice of formal hearing has been mailed to or otherwise served upon the

judge, it shall be the duty of the Commission to furnish to the judge as of the time of such notice the names of all persons and their addresses who have been interviewed by the Commission or its representative in investigating the charges set out in the notice of a formal hearing, as well as a copy or transcript of all statements of testimony, whether signed or unsigned, of any person so interviewed in connection with such charges and copies of all documents, writings, papers, records or other evidentiary material relevant to such charges which have been obtained by the Commission or its representative and reviewed by the Commission.

(b) If, after furnishing such information and prior to the date of the hearing, the Commission or its representative shall interview any other person or persons in connection with such charges, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such other person or persons.

(c) If a witness is discovered or interviewed or any documentary or other tangible evidence is discovered or comes into the possession of the Commission or its representative after the hearing has begun, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such witness and promptly furnish a copy of such documentary or other tangible evidence to the judge or the judge's counsel.

(d) The foregoing provisions shall not be construed as requiring that the Commission furnish to the judge any communications between members of the Commission or its representative or any other records of the Commission.

(e) In either of the situations described in Paragraphs (b) and (c), the Commission, upon compliance with the requirements of such paragraphs, shall be authorized to hear the testimony of any such witness or to admit into evidence any documentary or tangible evidence. However, the Commission may take such action with respect to the hearing either by way of postponement, recess or adjournment of the hearing to some future date as, upon a specific motion made by the judge therefor, may seem proper for the protection of the judge in the adequate presentation of a defense.

(f) At the hearing the judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence; to be represented by counsel; to examine and cross-examine witnesses; and to have subpoenas issued for attendance of witnesses to testify or for the production of books, papers and other evidentiary matters.

(g) When a transcript of testimony has been prepared at the expense of the Commission, a copy thereof, upon request, shall be available for use by the judge and counsel in connection with the proceedings, or the judge may arrange to procure a copy at his or her expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(h) If, in a proceeding before the Commission, the Commission should be in doubt as to the competency of the judge, the Commission may appoint a guardian ad litem or take such other action as the Commission may consider appropriate.

RULE 9

Amendments to Notice and Answer

The Special Master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or set forth additional facts and charges whether occurring before or after the commencement of the hearing. In case an amendment is allowed to the notice of formal hearing, the judge shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters set forth therein.

RULE 10

Report of Special Master

(a) Within twenty (20) days after the conclusion of a hearing before a Special Master and the Master's receipt of a transcript of the evidence, the Special Master shall prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings, findings of fact, any conclusions of law with respect to the issues presented by the notice of formal hearing and the answer thereto, or if there be no answer, findings of fact and any conclusions of law with respect to the allegations in the notice of formal hearing. The report shall also contain the Special Master's recommendation as to whether the Commission shall or shall not recommend discipline. The report shall be accompanied by a transcript of the evidence.

(b) Upon receiving the report of the Special Master, the Commission shall promptly serve a copy on the judge.

RULE 11

Objections and Briefs

(a) With [sic] fifteen (15) days after a copy of the Special Master's report is served on the judge, the judge may file with the Commission an original and six (6) copies of a statement of objections to the findings of fact and conclusions of law contained in the report of the Special Master and may file an original and six (6) copies of a brief in support thereof.

(b) If the judge does not contest the findings of fact or conclusions of law as set forth in the Special Master's report, the judge may, nevertheless, within such time file an original and six (6) copies of a brief in support of a claim that such findings and conclusions are not sufficient to justify removal, other discipline or retirement.

(c) In making a report, the Commission, when there is a report of a Special Master, may accept, modify or reject any or all of the findings of fact and conclusions of law of the Special Master as well as the Special Master's recommendation to the Commission that it recommend or not recommend discipline.

(d) If a formal hearing is held by the Commission, the judge may, within a reasonable time after the termination of the hearing as may be fixed by the Commission, file an original and six (6) copies of a brief with the Commission in support of the judge's claim that the Commission

should not recommend removal, other discipline or retirement.

RULE 12

Additional Evidence

In a proceeding pending before it, the Commission may, at any time after a formal hearing is held, order an additional hearing for the taking of additional evidence; provided that where a Special Master has been appointed, additional evidence shall be taken by the Special Master upon his or her own motion or by order of the Commission, and no such hearing for the taking of additional evidence shall be held by the Commission itself until after the Special Master has made a report. After the Special Master has made a report, the Commission may take additional evidence, or direct the Special Master to do so and report findings of fact and conclusions of law with respect thereto. The judge shall be given ten (10) days notice of the hearing to take additional evidence.

RULE 13

Extensions of Time

The Chairperson of the Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, for the transmittal of the Special Master's report to the Commission, and for filing a statement of objections to the report of the Special Master, and a Special Master may similarly extend the

time for the commencement of a hearing. The Commission may grant such additional extension of time as it may consider proper.

RULE 14

Recommendation of Commission of Removal, Other Discipline or Retirement

(a) The Commission may make a report recommending to the Supreme Court that a judge be (1) removed from office; (2) removed from office and prohibited from thereafter holding judicial office; (3) suspended from office for a specified period of time together with such other conditions and restrictions as the Commission may consider proper; (4) censured; (5) reprimanded; (6) retired; or (7) subjected to such other discipline as may seem to the Commission appropriate. In the case of a recommendation of censure, the same, if approved by the Supreme Court, shall be administered in open Court. If the Commission recommends a reprimand and such recommendation is approved by the Court, the same shall be administered by the Court at such place and in such manner as the Court may consider proper.

(b) The report shall be signed by the members of the Commission concurring therein and shall indicate if any member or members dissent from the report. Any member who does not agree with the report of the majority of the Commission may file a written dissent or special concurrence which shall be made a part of the record. The report shall be filed in the Supreme Court and shall be accompanied by the Special Master's report, if any, and a transcript of the evidence. A copy of the report as filed

shall be promptly served upon the judge and evidence of such service shall be filed in the Supreme Court.

RULE 15

Suspension by the Commission for Felony Indictment

(a) Upon indictment for a felony by a grand jury of this State or by a grand jury of the United States of any judge, the Commission shall, subject to subparagraph (b) of this Rule, review the indictment, and if it determines that the indictment relates to, and adversely affects the administration of the office of this indicted judge, and that the rights and interests of the public are adversely affected thereby, the Commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he or she was suspended. While a judge is suspended under this subparagraph and until final conviction, the judge shall continue to receive compensation. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be

chosen as provided in the Constitution of the State of Georgia of 1983 or the laws enacted in pursuance thereof.

(b) The Commission shall not review the indictment for a period of fourteen (14) days from the day the indictment is received. This period of time may be extended by the Commission. During this period of time, the indicted judge may, in writing, authorize the Commission to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(c) After any suspension is imposed under this subparagraph, the suspended judge may petition the Commission for a review. If the Commission determines that the judge should no longer be suspended, the judge shall immediately be reinstated to office.

(d) The findings and records of the Commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The finding and records of the Commission shall not be open to the public.

(e) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(f) If a judge who is suspended from office under the provision of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he or she is not so tried based on a

continuance granted upon a motion made only by the defendant.

RULE 16

Petition to Modify or Reject Commission's Recommendation

(a) A petition to the Supreme Court to modify or reject the recommendation of the Commission for removal, other discipline or retirement of a judge may be filed with six (6) copies within thirty (30) days after service of a copy of the Commission's report on the judge. The petition shall be verified, shall be based on the record, shall specify grounds relied on, and shall be accompanied by proof of service of seven (7) copies of the petition and of the brief on the Commission. Within twenty (20) days after service of the petition and brief, the Commission may serve and file a responsive brief. Within fifteen (15) days after service of such brief, the petitioner may file a reply brief, seven (7) copies of which shall be served on the Commission.

(b) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(c) A petition filed under this rule shall be heard in such manner as may be ordered by the Supreme Court.

RULE 17

Commission's Power to Secure Assistance

(a) In conducting investigations, the preparation of notices, presentation of evidence at a formal hearing,

preparation and filing briefs and other documents, or in otherwise carrying out its functions, the Commission may utilize the services of the Attorney General of this State or one of the Attorney General's deputies or assistants, and in addition thereto, or in lieu thereof, may secure and pay for the services of a member of the Bar of this State in any or all of such matters.

(b) The Commission may also employ such assistants as it considers necessary for the performance of the duties and in the exercise of the powers conferred upon the Commission; subpoena or arrange for and compensate medical or other experts and reporters; subpoena witnesses; and arrange for the attendance of witnesses not subject to subpoena; and pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Article VI, §VII, ¶VII, of the 1983 Constitution of the State of Georgia.

RULE 18

Powers of Commission – Subpoenas, Depositions, Contempt, Physical Examinations, Witness Fees

(a) The Commission, through its Chairperson or Director, shall have the power to issue subpoenas for the attendance of witnesses at a formal hearing held before the Commission or a Special Master under Rule 7, for the production at such hearing of books, papers and other evidentiary matter.

(b) After notice is given to a judge that a formal hearing will be held under Rule 5, either the Commission or the judge may take the depositions of any witness upon

reasonable written notice thereof given to the judge or the Commission of the time and place of taking of such depositions. The original of the deposition shall be returned to the Commission and at the hearing may be opened and used by either party under the same conditions and in the same manner and for the same purposes as depositions in civil cases. In connection with the taking of such depositions, the Commission, through its Chairperson or Director, shall have the power to issue a subpoena for the attendance of the witness whose testimony is to be taken and for the production at the taking of the deposition of books, papers and other evidentiary matter.

(c) If any person refuses to attend, testify, or produce any writings or things required by a subpoena issued by the Commission, as authorized under subparagraph (b) of Rule 4 or under this rule, the Commission may petition the judge of the Superior Court of the circuit in which the person may be found, or if a judge of that circuit is involved in the proceedings, then to any judge of an adjoining circuit, for an order compelling the person to attend and testify or produce the writings or things required by the subpoena. The Court shall order the person to appear before it at a specified time and place and then and there shall consider why the person has not attended, testified or produced writings or things as required. A copy of said order shall be served upon the person to whom the subpoena of the Commission was directed. If it appears to the Court that the subpoena was regularly issued, the Court shall order the person to appear before the Commission, or a Special Master, at the time and place fixed in the order and to testify or produce the required writings or things. Failure to obey the order

shall be punishable as contempt of court. The proceedings so instituted shall state in general terms, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify and to produce writings or things as required by the Commission's subpoena. If the proceedings are instituted prior to the giving of notice of a formal hearing, the proceedings shall not identify the judge by name but only as a number.

(d) Each witness shall receive for attendance the same fees and allowances prescribed by OCGA §24-10-24 for witnesses in civil cases.

(e) The Commission shall also have the authority after notice to the judge and a hearing to require that a judge involved in proceedings before the Commission submit to a physical or mental examination, or both, and specify the time, place, manner, conditions and scope of the examination and the physician or physicians by whom it is to be made.

RULE 19

Notices

(a) All notices provided for under these rules shall be in writing and shall be served upon the judge personally by a member of the Commission, or by a representative designated by the Chairperson, or may be served by registered or certified mail, return receipt requested.

(b) The initial notice sent to a judge with respect to an investigation to be or which has been conducted by the Commission shall be sent to the judge at such address as the Chairperson considers appropriate. Subsequent notices and mailed communications shall be sent to the judge at such address as he or she shall designate in writing filed with the Commission. If the judge is represented by counsel, all notices and papers to be sent to the judge under these rules may be served upon counsel.

(c) All notices mailed to a judge or counsel shall be enclosed in a sealed envelope marked on the face thereof," Confidential – to be opened by addressee only."

RULE 20

Confidentiality and Exceptions

(a) The proceedings of the Commission, including, but not limited to, complaints filed with the Commission, conferences of the Commission with respect to matters pending before it, minutes of actions and decisions of the commission, correspondence and other communications, and all other papers and documents shall be kept confidential. However, this confidentiality requirement shall not apply to notice of a formal hearing, a formal hearing, reports of the Commission to the Supreme Court recommending discipline, and decisions of the Commission made after a formal hearing that the judge with respect to whom the hearing was held was not guilty of misconduct justifying a recommendation of discipline. When, notwithstanding the rule of confidentiality set out in the first sentence of this subparagraph, the existence of a complaint filed with the Commission or any investigation of a

judge whether or not based upon a complaint shall in some way become public, the commission, at the request of the judge or upon its own motion if it considers such to be desirable, may make such statement with respect to the handling and status of the proceedings as the Commission may consider appropriate. When, in the exercise of its functions, the Commission has information concerning conduct of a member of the Bar which the Commission feels should be considered by the Disciplinary Board of The State Bar of Georgia for the purpose of determining whether such conduct constitutes a violation of the Code of Professional Responsibility, the Commission shall have the authority and it shall be its duty to refer the matter to the Board for such action as the Board may consider appropriate. The Commission shall be further authorized, in its discretion, to disclose to the Judicial Nominating Commission of the State of Georgia and to the Governor of the State, or any Commission, Board or Committee officially appointed to evaluate nominees for federal judgeships, including, but not limited to, a committee appointed by the American Bar Association for such purpose, any information involving any prospective nominee for judicial appointment which the Commission feels such Commission, Board or Committee should consider in passing upon the qualifications and fitness of the nominee for judicial appointment.

(b) All persons acting for the Commission in investigating a judge or participating in an official capacity in any proceedings relating thereto, including court reporters, shall be specifically advised by the Chairperson or by the Commission's representative of the requirement of confidentiality with respect to such matters as are confidential

under subparagraph (a) of this Rule and shall be directed not to disclose any information acquired by them to any person not officially or formally connected with the investigation or proceedings.

(c) All subpoenas and other proceedings which may be issued or conducted by the Commission prior to service of a notice of formal hearing shall not name the judge against whom the charges are pending, but shall style the proceedings by number as set out in Rule 5.

(d) If there shall be probable cause for inquiry concerning, or prosecution of, a witness for perjury in proceedings before the Commission, the record of the proceedings or papers filed in connection therewith shall be disclosed to the extent required by the inquiry or prosecution.

(e) A judge about whom an inquiry or investigation is being made may request release of information concerning the complaint and investigation, and the Commission, if it considers appropriate, may comply with such request.

(f) Any person violating the rule of confidentiality as set forth in this section shall be subject to punishment for contempt of the Supreme Court.

(g) The rule of confidentiality as set forth in this section shall not apply to any information which the Commission considers to be relevant to any current or future criminal prosecution against a judge, and upon receipt of a duly issued subpoena or court order by any state or federal court of record, the Commission is authorized to comply

with the same to the extent required by such subpoena or court order.

RULE 21

Immunity

Complaints, reports or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings. Members of the Commission, Commission counsel and the Commission staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges and immunities afforded to participants in actions filed in the courts of this state, and shall be immune from civil liability with respect to all papers filed with, or statements made or testimony given to, the Commission or the Supreme Court or given in any investigation or proceeding pertaining to a complaint against a judge, when done in good faith.

RULE 22

Advisory Opinions

The Commission shall be authorized to render advisory opinions concerning a proper interpretation of the Code of Judicial Conduct and to publish and disseminate the same. It shall be a complete defense to any complaint under these rules that the judge complained against has acted in accordance with and in reliance upon any such advisory opinion.

RULE 23

Other Powers

The Commission shall have such other powers and authority as may be reasonably necessary for the proper and efficient performance of its functions in carrying out the intent of the constitutional amendment creating the Commission.

RULE 24

Complaint Against a Member of the Supreme Court

A complaint against a member of the Supreme Court shall proceed in the same manner as a complaint against any other judge except:

(a) If the Commission recommends a sanction and the respondent consents to the sanction, the Commission shall impose the sanction and there shall be no appeal or further review by the Court.

(b) If the Commission recommends a sanction and the respondent objects to the sanction, the Commission shall proceed in the manner outlined in Rule 14. However, all current members of the Court shall be automatically disqualified and a substitute Court consisting of the current Chairperson and the six (6) immediate past Chairpersons of the Council of Superior Court Judges shall be impaneled to decide the matter in lieu of the sitting members of the Supreme Court. If any such Chairperson shall be disqualified or otherwise fails or refuses to serve, the next preceding Chairperson of the Council shall serve as a member of the substitute Court.

RULE 25

Emergency Interim Relief

(a) Incident to any preliminary investigation or formal proceeding conducted pursuant to these rules or upon receipt of sufficient evidence demonstrating that the continued service of any judge is causing immediate and substantial public harm and an erosion of public confidence in the orderly administration of justice and appears to be violative of the Georgia Code of Judicial Conduct, the Commission may petition the Supreme Court for injunctive or other relief, including temporary suspension or reassignment of the judge.

(b) The petition shall state the evidence justifying the emergency relief sought with particularity and shall be verified by the Chairperson and/or the Director of the Commission.

(c) Simultaneously with the filing of said petition, a copy shall be personally served upon the Respondent by any person approved by the Chairperson and/or the Director of the Commission. In the event personal service cannot be perfected, service may be perfected by registered or certified mail, return receipt requested, to the last known address of the Respondent as set forth in the most current issue of the *Georgia Courts Directory* published by the Administrative Office of the Courts.

(d) A written acknowledgement of service from the Respondent and/or his or her counsel shall constitute conclusive proof of service and eliminate the need to utilize any other form of service.

(e) Upon receipt of the verified petition for emergency relief, the Clerk of the Supreme Court shall immediately file the same; assign the matter a docket number; and notify the Chief Justice that the appointment of a Special Master is appropriate. Within 10 days after the docketing of said petition, the Court shall appoint a Special Master to conduct a hearing at which the Commission shall show cause why the relief sought by the Commission should be granted pending further disciplinary proceedings.

(f) Within 10 days after receipt of the Order of Appointment, the Special Master shall conduct a hearing at such time and place as may be designated by said Special Master or as may be mutually agreed upon by the parties.

(g) Within 10 days following the completion of said hearing, the Special Master shall file a report and recommendation with the Clerk of the Supreme Court and simultaneously serve copies thereof upon the Commission and the Respondent.

(h) The Supreme Court shall give expedited consideration to the report of the Special Master and may suspend the Respondent, with or without pay, pending final disposition of the disciplinary proceedings giving rise to the petition for emergency suspension or order such other action as it deems appropriate under all the circumstances.

RULE 26

Involuntary Retirement of Judges

In addition to other methods and causes provided in these Rules, a judge of any court in this State shall be

subject to involuntary retirement for a mental or physical disability which constitutes a serious and likely permanent interference with the performance of the duties of office on the following terms and conditions:

(a) Upon receiving a complaint or otherwise receiving information indicating that a Judge has been judicially declared incompetent; voluntarily committed by reason of incompetency or disability by a final judicial order after a judicial hearing; or may have a mental or physical disability that seriously impairs or interferes with the performance of the duties of office which is or is likely to become permanent, and after determining that said condition adversely affects the administration of the office of the disabled judge and the rights and interests of the public, the Commission shall, without further action, enter an order requiring the judge to show cause, within 10 days after service of said order, why said disabled judge should not be temporarily transferred to a disability inactive status pending the final disposition of the matter. A copy of said order shall be immediately served by hand delivery upon the judge, his or her guardian, or the director of the institution in which any such judge may be confined or otherwise receiving treatment.

Unless subsequently extended by consent, any such order shall automatically expire 90 calendar days after service upon the disabled judge, and during such time, said disabled judge shall continue to receive the compensation normally paid for such office.

(b) Simultaneously with the service of said order, the Commission shall request the judge to submit, within 10

days, all pertinent medical and other records to the Commission and shall designate one or more qualified medical, psychiatric or psychological experts to examine the disabled judge prior to any hearing on the matter. Said experts may or may not be agreed upon by the Commission and the disabled judge, but in any event, the written reports of all such experts shall be provided to the Commission and to the disabled judge as soon as medically feasible, and in any event, not less than 20 days prior to any hearing on the matter. The cost of any such examinations shall be borne solely by the Commission.

(c) The failure or refusal of a judge to submit the requested medical records or to submit to an independent medical examination, unless due to circumstances beyond the judge's control, shall preclude the judge from submitting reports of medical examinations done on his or her behalf, and the Commission may consider such failure or refusal as evidence that the judge has a disability.

(d) In the event the disabled judge shall desire independent medical examinations by experts other than those designated by the Commission, said judge shall have the absolute right to have such examinations conducted, provided, however, that any such examination shall be at the sole expense of the disabled judge and, provided further, that written reports of such examinations are provided to the Commission as soon as medically feasible and, in any event, not less than 20 days prior to any hearing on the matter.

(e) After receipt and review of the written reports of any and all such examinations and prior to any hearing on the matter, the Commission and the disabled judge

may agree upon a proposed stipulated disposition of the matter. Said proposed stipulated disposition, which shall contain, as appropriate, (i) findings of fact, conclusions of law and recommended final disposition; (ii) copies of the original complaint or other material giving rise to the complaint; and (iii) all written reports of examinations received and reviewed by the Commission, shall be immediately filed with the Supreme Court for approval, rejection or modification. In such filing, the disabled Judge shall not be identified, but the matter shall be captioned: "Stipulated Disposition Concerning Judge No. ___."

(f) The final decision on such stipulated disposition shall be made by the Supreme Court as soon as practicable, but in any event, not later than thirty (30) days after the matter is docketed in said Court, and the Court shall forthwith enter an appropriate order.

(g) In the event the proposed stipulated disposition is rejected and/or modified or revised in any substantial and material way, the disabled judge may, within ten (10) days of the receipt of the order of the Court, notify the Commission that he or she is withdrawing his or her agreement to the same, and said proposed stipulated disposition cannot thereafter be used against said disabled judge in any subsequent proceedings, nor shall the same be available for public inspection.

(h) If any such matter is not resolved by stipulated disposition, all such subsequent proceedings shall be conducted in the same manner as disciplinary proceedings, except:

(1) All such proceedings shall be and remain confidential until the final order of the Supreme Court;

(2) The Commission may appoint and compensate, if necessary, a lawyer to represent the disabled judge if the judge is without representation;

(3) If, after a formal hearing, the Commission concludes that the judge is incapacitated to continue to hold judicial office by reason of either or physical or mental disability, it shall not be empowered to recommend any disciplinary action against said judge, but rather shall be limited to recommending a suspension from office, either temporary or permanent, on such terms and conditions as may appear just and proper under the circumstances, until such time as an appropriate petition for reinstatement to active status has been filed by the disabled judge and granted by the Supreme Court.

(4) For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge who shall serve until the disabled judge is reinstated to active status or until the expiration of the disabled judge's term of office, whichever first occurs.

Effective Date of Rules

Adopted by order January 24, 1994; effective March 1, 1994.

(Seal) **SUPREME COURT OF GEORGIA**

Atlanta, July 29, 1994

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

It is ordered that the Rules of the Judicial Qualifications Commission be amended by adding a new subsection (f) to Rule 2, as follows:

> (f) Notwithstanding the foregoing provisions, the Chairperson, with the concurrence of a majority of the Commission, may at any time designate any judicial member of the Commission to preside at any formal hearing held by the Commission. Any such designation shall be made by written order signed by the Chairperson or the Director.

(Seal) **SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Sherie Welch, Clerk.

The Georgia Code of Judicial Conduct

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and me ning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as advisory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible

discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed for nor intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct

by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Terminology

Terms explained below are noted with an asterisk(*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 7A(1), 7A(2), 7B(1), 7B(2) and 7C.

"Comment" in connection with a case refers to valuative statements judging the professional wisdom of specific lawyering tactics or the legal correctness of particular court decisions. In contrast, it does not mean the giving

of generally informative explanations to describe litigation factors including: the prima facie legal elements of case types pending before the courts, legal concepts such as burden of proof and duty of persuasion or principles such as innocent until proven guilty and knowing waiver of constitutional rights, variable realities illustrated by hypothetical factual patterns of aggravating or mitigating conduct, procedural phases of unfolding lawsuits, the social policy goals behind the law subject to application in various cases, as well as competing theories about what the law should be. See Section 3B(9).

"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Section 3E(1)(c).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in

any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Section 3E(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 5D.

"Invidious discrimination" is any action by an organization that characterizes some immutable individual trait such as a person's race, gender or national origin, as well as religion, as odious or as signifying inferiority, which therefore is used to justify arbitrary exclusion of persons possessing those traits from membership, position or participation in the organization. See Section 2C.

"Knowingly," "knowledge," "known" or **"knows"** denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D(1), 3D(2) and 3E(1).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4A, 4B, 4C, 5C(4), 5F and 5G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1)(c) and 5C(4).

"Non-public information" denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Section 7A(1).

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and may include (as context demands) retention elections. See Sections 7A(1), 7A(2), 7B(1), and 7B(2).

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

"Third degree of relationship." The following persons are relatives within the third degree of relationship:

great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(c).

CANON 1
Judges Shall Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe such standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Commentary: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.

A. Judges shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen, and they should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also, Commentary under Section 2C.

B. Judges shall not allow their family, social, political or other relationships to influence their judicial conduct or judgment. Judges shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

Commentary: Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 5C(4)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or probation or corrections officer, but may provide to such person information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 7, regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness, because to do so may lend the prestige of the judicial office in support of a party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. Judges should not hold membership in any organization that practices invidious discrimination*.

Commentary: Membership by a judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization.

Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization, whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225. 101 L.Ed.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d. 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d. 462 (1984). Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.

CANON 3

Judges Shall Perform the Duties of Judicial Office Impartially and Diligently.

A. Judicial Duties in General. The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their office

prescribed by law*. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) Judges shall hear and decide matters assigned to them, except those in which they are disqualified.

(2) Judges shall be faithful to the law* and maintain professional competence in it. Judges shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) Judges shall require* order and decorum in proceedings over which they preside.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require* similar conduct of lawyers, and of staff, court officials, and others subject to their direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and business-like while being patient and deliberate.

(5) Judges shall perform judicial duties without bias or prejudice. Judges shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, and shall not permit staff, court officials and others subject to judicial direction and control to do so.

Commentary: Judges must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to their direction and control.

Judges must perform judicial duties impartially and fairly. Judges who manifest bias on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute. Facial expression, body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. Judges must be alert to avoid behavior that may be perceived as prejudicial.

(6) Judges should require* lawyers in proceedings before the court to refrain from manifesting, by words and conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section, 3B(6), does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that:

> (a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) Judges may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(c) Judges may consult with court personnel* whose function is to aid them in carrying out their adjudicative responsibilities, or with other judges.

(d) Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle matters pending before the court.

(e) Judges may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, judges must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. Judges must disclose to all parties all ex parte communications described in Section 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before them.

Judges must not independently investigate facts in a case and must consider only the evidence presented.

Judges may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

Judges must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on their staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication

or the substance of any oral communication should be provided to all parties.

(8) Judges shall dispose of all judicial matters fairly, promptly, and efficiently.

Commentary: In disposing of matters promptly, efficiently and fairly, judges must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. Judges should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. Judges should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by courts.

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of matters fairly and with patience.

Commentary: Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.

(9) Judges shall not, while a proceeding is pending or impending in any court, make any public comment* that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. Judges shall require* similar abstention on the part of court personnel*

subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary: The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit judges from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where a judge is a litigant in an official capacity, the judge must not comment publicly.

(10) Judges shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary: Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial.

(11) Judges shall not disclose or use, for any purpose unrelated to judicial duties, non-public information* acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) Judges shall diligently discharge their administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) Judges shall require* their staffs, court officials and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) Judges with supervisory authority for judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) Judges shall not make unnecessary appointments. Judges shall exercise the power of appointment impartially and on the basis of merit. Judges shall avoid nepotism and favoritism. Judges shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Appointees of judges include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities

(1) Judges who receive information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. Judges having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*

(2) Judges who receive information indicating a substantial likelihood that a lawyer has committed a

violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action. Judges having knowledge* that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

(3) Acts of judges, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of their judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against these judges.

Commentary: Appropriate action may include direct communication with the judge or lawyer who has committed the violation, or other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

Section 3D(1) requires judges to inform the Judicial Qualifications Commission of any other judge's violation of the Code of Judicial Conduct, if the violation raises a substantial question of fitness for office and if the violation is actually known to the reporting judge.

Section 3D(2) also requires judges to report to the State Bar of Georgia any violation by a lawyer of the Standards of Conduct, if the violation raises a substantial question of the lawyer's fitness as a lawyer and, again, if the violation is actually known to the reporting judge.

E. Disqualification.

(1) Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably

be questioned, including but not limited to instances where:

Commentary: Under this rule, judges are subject to disqualification whenever their impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

Judges should disclose on the record information that the court believes the parties or their lawyers might consider relevant to the question of disqualification, even if they believe there is no legal basis for disqualification.

The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding.

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or

the judge has been a material witness concerning it;

Commentary: A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.

(c) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such person, or any other member of the judge's family residing in the judge's household*:

i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an

interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(c)(iii) requires the judge's disqualification.

(2) Judges shall keep informed about their personal and fiduciary* economic interests*, and make a reasonable effort to keep informed about the personal financial interests of their spouses and minor children residing in their households.

F. Remittal of Disqualification. Judges disqualified by the terms of Section 3E may disclose on the record the basis of their disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary: A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently to the court, judges must not solicit, seek or hear comment on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in Section 3F. A party may act through counsel, if counsel represents on the record that the party has been consulted and consents. As a practical matter, judges may

wish to have all parties and their lawyers sign a remittal agreement.

CANON 4

Judges May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.

Judges, subject to the proper performance of their judicial duties, may not engage in the following quasi-judicial activities, if in so doing they cast doubt on their capacity to decide impartially any issue that may come before them;

A. Judges may speak, write, lecture, teach, and participate in other activities concerning the law*, the legal system, and the administration of justice.

B. Judges may appear at public hearings before an executive or legislative body or official on matters concerning the law*, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. Judges may serve as members, officers, or directors of an organization or governmental agency devoted to the improvement of the law*, the legal system, or the administration of justice. They may assist such organizations in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They may

make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, judges are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Non quasi-judicial, or non law-related, extra-judicial activities are governed by Canon 5.

CANON 5

Judges Should Regulate Their Extra-Judicial Activities to Minimize the Risk of Conflict with their Judicial Duties.

A. Avocational Activities. Judges may not engage in such avocational activities as detract from the dignity of their office or interfere with the performance of their judicial duties.

Commentary: Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.

B Civic and Charitable Activities. Judges may not participate in civic and charitable activities that reflect adversely upon their impartiality or interfere with the

performance of their judicial duties. Judges may serve as officers, directors, trustees, or non-legal advisors of educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of their members, subject to the following limitations:

(1) Judges should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them or will be regularly engaged in adversary proceedings in any court.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to re-examine the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) Judges should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organizations. A judge should not be a speaker or the guest of honor at an organization's fund-raising event, but may attend such events.

(3) Judges should not give investment advice to such an organization, but they may serve on

its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary: A judge's participation in an organization devoted to quasi-judicial, or law-related, extra-judicial activities is governed by Canon 4.

C. Financial Activities.

(1) Judges should refrain from financial and business dealings with lawyers, litigants, and others that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, or exploit their judicial positions.

(2) Subject to the requirement of subsection (1), judges may hold and manage investments, including real estate and engage in other remunerative activity including the operation of a business.

(3) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment they should divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Neither judges nor members of their families residing in their households* should accept a substantial gift, bequest, favor, or loan from anyone except as follows:

(a) judges may accept gifts incident to a public testimonial to them; books supplied by publishers on a complimentary basis for official use; or invitations to judges and their spouses to

attend bar-related functions or activities devoted to the improvement of the law*, the legal system, or the administration of justice;

(b) judges or members of their families residing in their households may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges, or a scholarship or fellowship awarded on the same terms applied to other applicants.

(c) judges or members of their families residing in their households may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before them, and if its value exceeds $100, the judges report it in the same manner as they report compensation in Canon 6C.

Commentary: This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) Judges are not required by this Code to disclose their income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary: Canon 3 requires judges to disqualify themselves in any proceeding in which they have a financial interest; Canon 5 requires judges to refrain from financial activities that might interfere with the impartial performance of their judicial duties; Canon 6 requires them to report all compensation they receive for activities involving personal services outside their judicial office.

Judges have the rights of an ordinary citizen, including the right to privacy in their financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of their duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(6) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

D. Fiduciary* Activities. Judges should not serve as executors, administrators, trustees, guardians, or other fiduciaries, except for the estates, trusts, or persons of members of their families and then only if such service will not interfere with the proper performance of their judicial duties. "Member of their families" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As family fiduciaries, judges are subject to the following restrictions:

(1) They should not serve if it is likely that as fiduciaries, they will be engaged in proceedings that would ordinarily come before them, or if the estates, trusts, or wards become involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

(2) While acting as fiduciaries, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.

Commentary: Judges' obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. Judges should not act as arbitrators or mediators for compensation. This prohibition does not apply to senior judges who serve as judges.

F. Practice of Law. Judges should not practice law, unless allowed by law.*

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law*, the legal system, or the administration of justice, if acceptance of such appointment might reasonably cast doubt upon the judge's impartiality or demean the judge's office.

Commentary: Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

CANON 6

Judges Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.

Judges may not receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments gives the appearance of influencing the judge in his judicial duties or otherwise gives the appearance of impropriety. Such compensation is subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging and other necessary expense reasonably incurred by the judge and, where appropriate to the occasion, by their spouses. Any payment in excess of such an amount is compensation.

C. Reports. Except as hereinafter provided to the contrary, full time judges should report the dates, places, and nature of any activities involving personal services for which they received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. Judges' reports for each calendar year should be filed between January first and April fifteenth of the following year in the office of the Clerk of the Supreme Court of Georgia. A copy of a

judge's federal income tax return shall be considered a sufficient compliance with this paragraph. Such report or tax return shall be filed under seal and shall be available for inspection only by the Justices of the Supreme Court of Georgia and the members of the Judicial Qualifications Commission.

CANON 7

Judges Should Refrain from Political Activity Inappropriate to Their Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate* for public election* to judicial office should not:

(a) act as a leader or hold any office in a political organization*;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary: A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

(c) solicit funds for or pay an assessment or make a contribution to a political organization, or purchase ticket for political party dinners, or other functions, except as authorized in subsection A(2).

(2) Judges holding an office filled by public election* between competing candidates*, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.

B. Campaign Conduct

(1) Candidates*, including an incumbent judge, for a judicial office that is filled either by public election* between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office;

(b) should prohibit officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), they should not allow any other person to do for them what they are prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce their views on disputed legal or political issues; or misrepresent their identities, qualifications, present positions, or other facts.

(2) Candidates*, including an incumbent judge, for a judicial office that is filled by public election* between competing candidates should not themselves solicit campaign funds, or solicit publicly stated support, or be present at a function while solicitations of campaign funds on their behalf are conducted, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaigns and to obtain public statements of support for their candidacies. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers.

Candidates, including incumbent judges, should not use or permit the use of campaign contributions for the private benefit of themselves or members of their families.

C. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates*. A successful candidate whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model Rules of Professional Conduct].

Application of the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as an administrative law judge of an executive branch agency or of the Board of Workers Compensation, an associate judge, a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges shall comply with this Code except as provided below.

A. Part-time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. Part-time judges:

(1) are not required to comply with Canon 5D [fiduciary activities], 5E [arbitration], 5F [practice of law], and 5G [extra-judicial appointments], and are not required to comply with Canon 6C [annual financial reporting].

(2) should not practice law in the court on which they serve, or in any court subject to the appellate jurisdiction of the court on which they serve, or act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such a judge pro tempore is not required to comply with Canon 5C(3) [financial activities], 5D [fiduciary activities], 5E [arbitration and mediation], 5F [practice of law], and 5G [extra judicial appointments], and Canon 6C [annual financial reporting].

(2) Persons who have been judges pro tempore should not act as lawyers in proceedings in which they have served as judges or in other proceedings related thereto.

C. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 5C(1), 5C(2), 5C(3) [personal and family financial activities] and 5D [fiduciary activities], and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary: If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 5D, continue to serve, but only for that period

of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship, and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 5C(1), 5C(2) and 5C(3), continue in that activity for a reasonable period, but in no event longer than one year.

Effective Date of Code

This Code shall become effective January 1, 1994.

BEFORE THE COMMISSION
ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

NOTICE OF FORMAL PROCEEDINGS

This is to notify you that the Judicial Qualifications Commission has concluded that formal proceedings should be instituted for the purpose of determining whether you committed the acts enumerated below and, if so, whether you were guilty of willful misconduct in office or conduct prejudicial to the administration of justice which brings the judicial office into disrepute:

I.

Whether you have failed to operate and conduct the business of the Magistrate Court of Peach County, Georgia in the manner required by the Code of Judicial Conduct by failing to personally observe the high standards of conduct required to preserve and uphold the integrity of the judiciary and by wrongfully using the power and prestige of your office to benefit your own personal and political interests in, but not limited to, the following instances:

A. issuing fifty-six (56) sets of five (5) identical unwarranted and unnecessary Orders to each and every employee of the Sheriff's Department of Peach County and thereafter issuing contempt citations against certain of said employees, as well as the County Coroner, for failing to serve said Orders.

B. engaging in a well-publicized and ongoing dispute with the governing authorities of Peach County,

Georgia which culminated in your preparing and causing to be issued, by a judicial officer outside the judicial circuit in which your court is located, felony warrants for each and every member of the Peach County Commission by reason of your personal bias and animosity toward said Commissioners.

C. publicly responding to the decision of a specially appointed and completely independent prosecutor to dismiss said warrants by issuing an official public statement to the media which repeats earlier accusations and criticisms of the Peach County Commission and seeks to justify the numerous improper and unwarranted actions taken by you in your ongoing personal dispute with said Commission.

D. unilaterally and arbitrarily reducing the fees normally charged in the Magistrate Court for the purpose of reducing the income flowing to Peach County from said Court and thereby "get even" with the Peach County Commission for its failure to support you in your ongoing dispute with the Sheriff's Department.

E. repeatedly making unwarranted, unreasonable and unnecessary demands upon various county officials for records, information, and/or services which were totally unrelated to the operation of your court and/or were easily accessible to you or any other member of the public.

F. improperly closing the office of the Magistrate Court for a period of three (3) consecutive days and placing the employees of said court on paid leave, while leaving only your eighteen (18) year-old daughter attending said office.

II.

Whether you engaged in ex parte communications with one of the parties to a matter litigated in your court and thereafter reversed an earlier decision without notice to or an opportunity to be heard by the opposite party, resulting in additional unnecessary litigation in the Superior Court of Peach County and the waste of additional judicial resources.

III.

Whether such conduct, or any of it, has created widespread and adverse publicity which has caused the judiciary in general, and the Magistrate Court of Peach County in particular, to be subjected to criticism and ridicule and be held in disrepute by members of the public in general, as well as by numerous citizens of Peach County, Georgia.

IV.

Whether such conduct, or any of it, constitutes irresponsible or improper activity which adversely affects the administration of your office, as well as the rights and interests of the public.

V.

Whether such conduct, or any of it, has resulted in the filing of numerous complaints with this Commission concerning the embarrassment, humiliation, and dismay experienced by numerous citizens of Peach County, Georgia as a result of your continuing attempts to advance

your personal, private and political interests by intimidating and otherwise coercing similarly elected public officials through the arrogant, arbitrary and capricious abuse and/or misuse of the powers of your office.

VI.

Whether such conduct, or any of it, constitutes a violation of the Code of Judicial Conduct, and Canons 1, 2, and 3 thereof in particular, for which you should be appropriately sanctioned.

This 31st day of March, 1994.

JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ John E. James
John E. James, Chair

ATTEST:

/s/ Earle B. May, Jr.
Earle B. May, Jr.
Director

IN THE SUPREME COURT
FOR THE STATE OF GEORGIA

IN RE: INQUIRY CONCERNING A JUDGE
NO. 94-70

DOCKET NO. _____

RESPONSE OF THE JUDICIAL QUALIFICATIONS COMMISSION IN OPPOSITION TO EMERGENCY MOTION [FOR] A CONTINUANCE OF PRETRIAL CONFERENCE AND HEARING BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

(Filed Sep. 23, 1994)

COMES NOW the Judicial Qualifications Commission and opposes Respondent's motion for a continuance. The Judicial Qualifications Commission shows the following facts:[1]

1. The Answer to Notice of Formal Proceedings in this matter was filed on May 4, 1994.

2. On April 22, 1994, John E. James, Chairman of the Judicial Qualifications Commission, appointed Judge Hugh Lawson to preside in this matter. (Attachment A)

3. The deposition of Judge O'Neal was noticed, on May 9, for May 19, 1994. (Attachment B) Because Mr. Harvey, counsel for Judge O'Neal, presented scheduling

---

[1] Because of the limited time within which the Judicial Qualifications Commission must respond to the motion for continuance, in order for this Court to rule before the prehearing conference scheduled for 10:00 a.m. on September 27, the undersigned counsel states in her place certain facts which would otherwise be supported by affidavits. Affidavits will be provided at a later date should this Court request them.

conflicts (Attachment C), the deposition was renoticed for July 26, 1994. (Attachment D) On July 25, Judge O'Neal notified Mr. Harvey, who notified the undersigned, that she had laryngitis and would not be available for the deposition. The undersigned requested a medical excuse. Instead, Judge O'Neal faxed her own affidavit. (Attachment E, Exhibit 1) Judge O'Neal gave her deposition on August 1.

4. On August 11, 1994, Judge Lawson wrote to counsel, informing them that the hearing would not take place in August because of Mr. Harvey's involvement in a death penalty trial, but that it would go forward on September 29. The letter included a pretrial order form and scheduled a prehearing conference for September 26. (Attachment F) On August 18, Earle May wrote to counsel to change the date of the prehearing conference to September 27. (Attachment G)

5. Earle May sent a reminder letter to counsel on September 7. (Attachment H)

6. On September 14, 1994, the undersigned served a notice for the deposition of a witness to be used at the hearing. (Attachment I)

7. On September 20, the undersigned received a letter which Mr. Harvey mailed on September 19, informing her that he could not attend the deposition because he would be in a death penalty trial for another two weeks. No copy of that letter was sent to Mr. May or Judge Lawson. (Attachment J) The undersigned called Mr. Harvey's office to inform him that the deposition was canceled (for unrelated reasons) and was told that he would be on trial through the week of September 26. This

was the first notice the undersigned had received of any potential conflict for that week.

8. The undersigned immediately called Mr. May to inform him of the apparent conflict and learned that Mr. May had not received such information. Mr. May informed the undersigned that he would call Judge Lawson. *Neither man had been informed of Mr. Harvey's conflict before the undersigned called Mr. May on September 20.*

9. Judge Lawson then called Mr. Harvey; he restated his conversation with Mr. Harvey in his letter to Mr. Harvey of September 20, 1994. (Attachment K)

10. Nine depositions have been taken in this case. Mr. Harvey was present at the deposition of Judge O'Neal and took two depositions. Pete Whitlock of Mr. Harvey's office was present at one deposition. Michael Hauptman took the one deposition and was present at four depositions.

11. In spite of Mr. Harvey's protest about the 166 documents to be offered by the Judicial Qualifications Commission at the hearing, the vast majority of those documents were generated by Mr. Harvey's client. Mr. Harvey has adopted those very documents on behalf of his client for use at the hearing. (Attachment L)

12. At the hearing on this matter, counsel for the Judicial Qualifications Commission will present evidence that some of the wrongful conduct with which the judge has been charged is still continuing. Postponing the hearing is not therefore in the interest of the citizens of the county in which she serves.

13. As Mr. Harvey has stated, in the motion for a continuance, he will be unavailable in October because of a trial specially set before Judge Tidwell in U.S. District Court.

14. The undersigned has served a copy of this Response upon all interested parties.

WHEREFORE, the Judicial Qualification Commission respectfully prays this Court to DENY Respondent's motion for a continuance.

Respectfully submitted,

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
315 W. Ponce de Leon Avenue
Suite 721
Decatur, Georgia 30030-2441
(404) 378-5111
Georgia Bar No. 548187

ATTORNEY FOR THE JUDICIAL QUALIFICATIONS COMMISSION

ATTACHMENT A

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

ORDER

Judge Hugh Lawson, a member of this commission is hereby appointed to preside in the above matter. All

parties and their counsel are directed to file copies of all pleadings with the commission director and the presiding Judge. The presiding Judge shall rule on all questions in this matter.

SO ORDERED this 22nd day of April, 1994

/s/ John E. James
John E. James
Chairman

ATTACHMENT B

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

NOTICE OF DEPOSITION

TO: Bruce S. Harvey, Esq.
135 Nassau Street, N.W.
Atlanta, Georgia 30303

PLEASE TAKE NOTICE that, pursuant to the provisions of the Georgia Civil Practice Act, the undersigned will take the deposition of Judge Linda O'Neal on Thursday, May 19, 1994, beginning at 10:30 a.m. and continuing until completed. The deposition will be taken at the office of Mary Ann B. Oakley, 133 Carnegie Way, Suite 508, Atlanta, Georgia 30303.

The deposition shall be taken upon oral examination before a Notary Public or some other person duly authorized to administer the oath according to the laws of the State of Georgia.

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
Suite 508, Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303
(404) 223-5250
Georgia Bar No. 548187

COUNSEL FOR THE COMMISSION
ON JUDICIAL QUALIFICATIONS

ATTACHMENT C

LAW OFFICES OF
BRUCE S. HARVEY

May 18, 1994

CONFIDENTIAL – TO BE OPENED
BY ADDRESSEE ONLY

Honorable Hugh Lawson, Chief Judge
Oconee Judicial Circuit
P.O. Box 269
Hawkinsville, Georgia 31036-0269

RE: Judicial Qualifications Commission
Inquiry Concerning a Judge #94-70

Dear Judge Lawson:

Please allow this letter to confirm our telephone conversation regarding a continuance of the depositions which were scheduled for Thursday, May 19, 1994. It is my understanding that these depositions will be continued until a further date due to a scheduling conflict.

Please be advised that I have the following scheduling conflicts for the end of May and the month of June, 1994:

1. *United States v Charles Pipkins*, begins trial in the United States District Court, Atlanta, on May 23, 1994, and will last approximately one week.

2. *United States v Jack Coburn, et al.*, is scheduled to begin trial in the United States District Court in Grand Rapids, Michigan on May 31, 1994, and will last at least one week.

3. *State of Georgia v Kesserling*, in the Superior Court of Cobb County, is scheduled to begin trial on June 7, 1994, and will last at least three week. This is a case in which the State is seeking the death penalty.

4. *State of Georgia v Harris*, is a murder case which is set to begin trial in the Superior Court of Fulton County on June 20, 1994.

In addition to these main trials, I have several hearings in other cases during May and June. Based upon

this, I am requesting that further action in this case will be placed on hold until after June, 1994.

Thank you.

Best regards,

/s/ Bruce S. Harvey
Bruce S. Harvey
Attorney at Law

BSH/jg

cc: Mary Ann B. Oakley, Esquire

ATTACHMENT D

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

NOTICE OF DEPOSITION

TO: Bruce S. Harvey, Esq.
135 Nassau Street, N.W.
Atlanta, Georgia 30303

PLEASE TAKE NOTICE that, pursuant to the provisions of the Georgia Civil Practice Act, the undersigned will take the deposition of Judge Linda O'Neal on Tuesday, July 26, 1994, beginning at 1:30 p.m. and continuing until completed. The deposition will be taken at the office of Mary Ann B. Oakley, 133 Carnegie Way, Suite 508, Atlanta, Georgia 30303, or at such other place as counsel may agree.

The deposition shall be taken upon oral examination before a Notary Public or some other person duly authorized to administer the oath according to the laws of the State of Georgia.

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
Suite 508, Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303
(404) 223-5250
Georgia Bar No. 548187

COUNSEL FOR THE COMMISSION
ON JUDICIAL QUALIFICATIONS

ATTACHMENT E

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE	No. 94-70

Remarks made at the scheduled deposition of **LINDA O'NEAL**, commencing at 1:30 p.m. on July 26, 1994, at 508 Carnegie Building, 133 Carnegie Way, N.W., Atlanta, Fulton County, Georgia, 30303, before Clifford C. Sheffield, III, Certified Court Reporter.

SHEFFIELD REPORTING SERVICE
CERTIFIED COURT REPORTERS
2869 ARDEN ROAD, N.W.
ATLANTA, GEORGIA 30327
(404) 352-1779

APPEARANCES

MARY ANN B. OAKLEY, Esquire
508 Carnegie Building
133 Carnegie Way, N.W.
Atlanta, Georgia 30303

BRUCE STEVEN HARVEY, Esquire
135 Nassau Street, N.W.
Atlanta, Georgia 30303-2009

EXHIBITS

exhibit 1 marked at page 4

PROCEEDINGS

[p.4] **MS. OAKLEY:** This was to have been the deposition of Judge Linda O'Neal. Judge O'Neal informed her attorney, Mr. Harvey, yesterday that she was suffering from laryngitis and would be unable to attend the deposition today. Mr. Harvey at that point asked her to provide a doctor's excuse. She has provided the affidavit which we will mark and attach as exhibit 1, and has not provided a doctor's excuse. Is that correct?

MR. HARVEY: That's correct. And I'm Bruce Harvey, for the record, representing Judge O'Neal, or – I don't know how we do it in this – the Judge in Inquiry, 94-70. You've got the style, correct?

MS. OAKLEY: Yes.

THE REPORTER: Yes.

MR. HARVEY: Okay. And we would rely upon that affidavit, which will [p. 5] be appended to the record. And we will also state that we are ready to reschedule the deposition at the earliest possible time, in the convenience of the parties.

MS. OAKLEY: Off the record.

(Discussion off the record.)

MS. OAKLEY: Judge O'Neal is not present. Off the record now.

(Discussion off the record.)

(Document was then marked as exhibit 1 for identification.)

(remarks concluded.)

EXHIBIT 1

7-26-94 US

IN THE MAGISTRATE COURT OF PEACH COUNTY
STATE OF GEORGIA

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF PEACH

Personally before the undersigned officer authorized to administer oaths appeared Judge Linda O'Neal who does state on oath the following:

1. That affiant has personal knowledge of the facts contained in this affidavit which pertains to the above-styled matter.

2. On July 25, 1994, affiant became ill with acute laryngitis.

3. On July 26, 1994, affiant's illness was serious enough to require bed rest.

/s/ Linda O'Neal
AFFIANT

Sworn to and subscribed before me this 26th day of July, 1994.

Notary Public, Peach County, Georgia.
My Commission Expires August 2, 1997.
/s/ William Cooney
Notary Public

ATTACHMENT F

[seal]

SUPERIOR COURTS
EIGHTH JUDICIAL ADMINISTRATIVE DISTRICT
OCONEE JUDICIAL CIRCUIT

Bleckley, Dodge, Montgomery, Pulaski,
Telfair & Wheeler Counties

HUGH LAWSON,
CHIEF JUDGE
PULASKI COUNTY
COURTHOUSE
P.O. BOX 269
HAWKINSVILLE,
GEORGIA 31036
PHONE 912-783-1696

PHILLIP R. WEST, JUDGE
DODGE COUNTY
COURTHOUSE
P.O. BOX 571
EASTMAN, GEORGIA
31023
PHONE 912-374-7731

August 11, 1994

Mr. Bruce S. Harvey
Attorney at Law
135 Nassau Street, N.W.
Atlanta, Georgia 30303

RE: Judge Linda O'Neal

Dear Mr. Harvey:

After talking with Mary Ann Oakley yesterday, and being unable to reach you by phone because of your trial conflict, I am writing to give you my idea of how this matter will progress.

I understand that the taking of depositions in this case, and your present involvement in the trial of a death penalty case in Cobb County will prevent a hearing in this case in August. However, I do not think this case should be continued again and it is now scheduled for

trial in September beginning at 9:00 a.m. on Thursday, September 29.

I am handing to you and Ms. Oakley herewith a pre-trial order which is self-explanatory. I am asking Earle May to find a convenient place in Atlanta for a pre-trial conference and he will advise us of that location as soon as it is determined.

If either you or Ms. Oakley have any questions I will be glad to hear from you.

Very truly yours,

/s/ Hugh Lawson
Hugh Lawson

HL/nbp
enclosure
cc: (w/enclosure)
Ms. Mary Ann B. Oakley✓
Mr. Earle B. May, Jr.

THE JUDICIAL QUALIFICATIONS
COMMISSION OF GEORGIA

IN RE: INQUIRY CONCERNING :
CHIEF MAGISTRATE : NO. 94-70
LINDA O'NEAL :

ORDER

This matter will be heard by the Commission beginning at 9:00 a.m. on September 29, 1994, in the courtroom

of the Supreme Court of Georgia, 6th Floor, State Judicial Building, Atlanta, Georgia.

Counsel for the Commission and for Chief Magistrate O'Neal, shall furnish to the undersigned, with copies to each other and to Director Earle May, not later than September 16, 1994, the following:

(a) a statement of the factual basis for each charge made against Chief Magistrate O'Neal and for Chief Magistrate O'Neal's defense to each charge;

(b) a statement of the issues formed by the charges and defenses;

(c) a list of the witnesses each attorney expects to call at the hearing, with a brief summary of the expected testimony of each witness;

(d) a list of the documentary evidence each attorney expects to offer, with a brief summary of the content of each document; and

(e) an estimate of the time required to present each side of the matter.

Unless written objections are filed before September 26, 1994, the Commission will consider counsel to have stipulated and agreed as to the authenticity of the listed documentary evidence which may be admitted into evidence without further proof of authenticity; however, all other objections to documentary evidence are reserved until the hearing. Any objections to testimony and/or exhibits in any deposition must be made in writing before September 26, 1994, after which the Commission will not consider any such objections.

Counsel are ordered to meet with the undersigned and Director Earle May at 9:00 a.m. on September 26, 1994, at a location to be announced, for a pre-hearing conference to consider the simplification and narrowing of the issues; the possibility of obtaining admission of facts and documents which will avoid unnecessary proof; the limitation of the number of witnesses; and any other matter which may aid in the disposition of this case.

SO ORDERED, this the 11th day of August, 1994.

/s/ Hugh Lawson
HUGH LAWSON
DESIGNATED PRESIDING
JUDGE

ATTACHMENT G

JUDICIAL QUALIFICATIONS COMMISSION
SUITE 206
77 EAST CROSSVILLE ROAD
ROSWELL, GEORGIA 30075-3085
(404) 587-5208
FAX: (404) 587-5422

August 18, 1994

[Names Omitted In Printing]

Confidential – To Be Opened By Addressee Only

Mary Ann B. Oakley
Attorney at Law
Suite 508
133 Carnegie Way, N.W.
Atlanta, GA 30303

Bruce S. Harvey
Attorney at Law
135 Nassau Street, NW
Atlanta, GA 30303

Re: Judge Linda O'Neal
Docket No. 94-70

Dear Counsel:

Subsequent to Judge Hugh Lawson's letter of August 11, 1994, we have discovered that both he and I are scheduled to participate in a seminar for Municipal Court Judges on September 26, 1994. For this reason, it is necessary to change the scheduled pre-trial conference to Tuesday, September 27, 1994, at 10:00 a.m. This conference will be held in the Conference Room of the Office of Bar Admissions on the 6th Floor of the State Health Building at 47 Trinity Avenue in Atlanta and a court reporter will be present.

We look forward to seeing both of you, and in the meantime, will expect to receive the documents set forth in Judge Lawson's order of August 11, 1994 on or before September 16, 1994. In addition, please submit all requests for trial subpoenas with complete names and addresses to this office no later than September 16, 1994.

With best regards to each of you, I am

Sincerely,

/s/ Earle B. May, Jr.
Earle B. May, Jr.
Director

EBM:mma

cc: Members of the Commission (w/enclosures)

ATTACHMENT H

JUDICIAL QUALIFICATIONS COMMISSION
SUITE 206
77 EAST CROSSVILLE ROAD
ROSWELL, GEORGIA 30075-3085
(404) 587-5208
FAX: (404) 587-5422

September 7, 1994

[Names Omitted In Printing]

Confidential – To Be Opened By Addressee Only

Mary Ann B. Oakley
Attorney at Law
Suite 721
315 W. Ponce de Leon Avenue
Decatur, GA 30030-2441

Bruce S. Harvey
Attorney at Law
135 Nassau Street, NW
Atlanta, GA 30303

Re: Judge Linda O'Neal
Docket No. 94-70

Dear Counsel:

This will serve to remind you that the following documents are due in this office no later than Friday, September 16, 1994:

1. Requests for trial subpoenas with complete names and addresses; and

2. All items set forth in paragraphs (a) – (e) of Judge Lawson's Order dated August 11, 1994 (mailed to each of you on the same date).

For your information, no one will be in the office that day, but mailed documents hopefully will be delivered on the following Monday. If possible, we would like the documents on Thursday, September 15.

Please also remember the Pre-trial Conference currently scheduled for Tuesday, September 27, 1994, at 10:00 a.m. A court reporter will be present for the Pre-trial.

I will be out of the office from September 14 – September 18, but our administrative assistant, Mary Anderson, will be available to assist either of you should the need arise.

With best regards, I am

Sincerely,

/s/ Earle B. May, Jr.
Earle B. May, Jr.
Director

EBM:mma
cc: Judge Hugh Lawson

ATTACHMENT I

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE NO. 94-70

NOTICE OF DEPOSITION

TO: Bruce S. Harvey, Esq.
135 Nassau Street, N.W.
Atlanta, Georgia 30303

PLEASE TAKE NOTICE that, pursuant to the provisions of the Georgia Civil Practice Act and O.C.G.A. Title 24, the undersigned will take the deposition of Ricky E. Jones for use as evidence at hearing on this action, on Monday, September 26, 1994, at 10:00 a.m., at Mr. Jones' law office, 1017 N. Houston Street, Warner Robins, Georgia 31093-1505.

The deposition shall be taken upon oral examination before a Notary Public or some other person duly authorized to administer the oath according to the laws of the State of Georgia. You are invited to attend and cross-examine.

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
315 W. Ponce De Leon Avenue
Suite 721
Decatur, Georgia 30030-2441
(404) 378-5111
Georgia Bar No. 548187

COUNSEL FOR THE JUDICIAL
QUALIFICATIONS
COMMISSION

ATTACHMENT J

LAW OFFICES OF
BRUCE S. HARVEY

September 19, 1994

Mary Ann B. Oakley, Esquire
315 W. Ponce De Leon Avenue
Suite 721
Decatur, Georgia 30030-2441

RE: Inquiry Concerning A Judge No. 94-70

Dear Mary Ann:

I am in receipt of your Notice of Deposition for the deposition of Ricky E. Jones on September 26, 1994. Please be advised that I am currently on trial in the ***State of Georgia v Jesse Wayne Johns,*** Indictment No. 92-CR-0435, in the Superior Court of Henry County, before Judge Craig. (A copy of the trial notice is enclosed). This is a case in which the State is seeking the death penalty and I anticipate that it will last another two weeks.

Thank you.

Best regards,

/s/ Bruce S. Harvey
Bruce S. Harvey
Attorney at Law

BSH/jg
enc.

135 Nassau Street, N.W., Atlanta, Georgia 30303
(404) 659-4628 / FAX (404) 681-3953

ATTACHMENT K

[SEAL]

SUPERIOR COURTS
EIGHTH JUDICIAL ADMINISTRATIVE DISTRICT
OCONEE JUDICIAL CIRCUIT

Bleckley, Dodge, Montgomery, Pulaski,
Telfair & Wheeler Counties

HUGH LAWSON,
CHIEF JUDGE
PULASKI COUNTY
COURTHOUSE
P.O. BOX 269
HAWKINSVILLE,
GEORGIA 31036
PHONE 912-783-1696

PHILLIP R. WEST,
JUDGE
DODGE COUNTY
COURTHOUSE
P.O. BOX 571
EASTMAN, GEORGIA
31023
PHONE 912-374-7731

September 20, 1994

Mr. Bruce S. Harvey
Attorney at Law
135 Nassau Street, N.W.
Atlanta, Georgia 30303

RE: Judge Linda O'Neal
JQC Docket Number 94-70

Dear Mr. Harvey:

This letter is to confirm and restate my advice to you in our telephone conversation this afternoon at approximately 1:45 p.m.

I understand that you are presently defending a death penalty case in Henry Superior Court before Judge Craig. I understand that you do not anticipate that a panel of jurors will be qualified before the end of this week and that it will be early next week before the trial

jury is selected. I understand that you anticipate the trial of the case to take five to seven days on the guilt phase, with more time to be required on the penalty phase if the defendant is found guilty.

I understand that you are scheduled to begin a criminal trial before Judge Tidwell in Atlanta on October 3 and that you anticipate the trial of this case will take at least four weeks.

The case against Judge O'Neal has been pending before the Judicial Qualifications Commission since last January. The Commission regards the matter as one of great importance and considers that it is a case that must be resolved without further delay. Judge O'Neal's case has been continued once because of a conflict in your schedule; could be continued against this month; and, if another continuance is granted, the hearing would be difficult to reschedule before the end of the year.

As you and I discussed, your practice is such that you could legitimately have a conflict which would prevent a hearing in the O'Neal case for the next eighteen to twenty-four months. Such a delay simply cannot be tolerated in a case involving allegations of misconduct against a sitting judge either from the point of view of the judge herself or from the perspective of the citizens of her jurisdiction.

In view of the defenses filed by Judge O'Neal I assume that she will contend that she is guilty of no misconduct and that she is eager to clear her name of any charges. As I said, the JQC, for its part, is equally anxious to see the matter resolved. For these reasons, the pre-trial hearing scheduled in this case for 9:00 a.m., September

26, 1994, and the hearing before the Judicial Qualifications Commission scheduled for 9:00 a.m. on Thursday, September 29, 1994, will not be continued and will be held as scheduled even if you cannot be present. You have indicated to me that there is the possibility that another lawyer in your office might represent Judge O'Neal at the hearing, I hope this proves to be the case. Nevertheless, whether she is represented by you, another lawyer in your firm, or some other attorney, both you and Judge O'Neal should understand that the pre-trial hearing will be held on September 26 and the hearing before the JQC will begin September 29.

If you have any question, please feel free to contact me by letter or phone.

Very truly yours,
/s/ Hugh Lawson
Hugh Lawson

HL/nbp

cc: Ms. Mary Ann B. Oakley✓
Mr. John E. James
Mr. Earle B. May, Jr.

DELIVERED BY MAIL AND FAX

ATTACHMENT L

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE NO. 94-70

DOCUMENTS TO BE OFFERED ON
BEHALF OF JUDGE O'NEAL

The Respondent adopts Movant's list of documents as if fully set forth herein. The respondent submits that these documents will support her contention that she conducted her office in a professional manner; and, in no way, violated any Cannons of the Code of Judicial Conduct.

The respondent reserves the right to timely amend this list of documents if necessary.

/s/ Bruce S. Harvey
BRUCE S. HARVEY
ATTORNEY FOR
RESPONDENT
STATE BAR NO. 335175

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

IN RE: JUDGE NO. 94-70

PREHEARING CONFERENCE BEFORE
JUDGE HUGH LAWSON

September 27, 1993

10:00 a.m.

6th Floor
47 Trinity Avenue
Atlanta, Georgia

Renda K. Cornick, CCR-B-909

BROWN REPORTING, INC.
1100 SPRING STREET, SUITE 750
ATLANTA, GEORGIA 30309
(404) 876-8979

APPEARANCES OF COUNSEL

On behalf of the Commission:

MARY ANN OAKLEY, Esq.
Law Offices of Mary Ann B. Oakley
316 W. Ponce de Leon Avenue
Decatur, Georgia 30030

On behalf of the Respondent

WILBURN C. WHITLOCK, JR., Esq.
135 Nassau Street
Atlanta, Georgia 30303

Also Present:

Earle B. May, Jr.

[p. 3] JUDGE LAWSON: Let's hear what you have to say.

MS. OAKLEY: I received – and I understand Judge O'Neal has had the original of this for over a year – I received on Friday from Rick Jones a transcript of the contempt of hearing that is at issue in this case, so I would like to make that an exhibit.

It threw the whole thing out of phase so I just reprinted the whole list. After getting the transcript, I realized some of what had been told was wrong, so I changed the last sentence in Paragraph A and that page fits right in, it just substitutes for the factual bases, the first page.

I brought you a copy in case you didn't have one handy.

MR. WHITLOCK: Thanks.

MR. MAY: So we will have the record clear, then, you have handed to the judge an amended list of documents to be offered on behalf of the JQC.

MS. OAKLEY: Correct. The only thing amended is adding 167 but because it changed the whole sequence of comments on the last three or four pages, I reprinted the whole list. The only change [p. 4] on the first page of factual basis is the end of Paragraph A, the last two sentences.

JUDGE LAWSON: Do we have any quarrel about these documents, the admissibility of these documents.

MR. WHITLOCK: I don't believe so. I think we stipulated.

MS. OAKLEY: That's right. In fact, I think that the prehearing statement that was filed on behalf of the judge stipulates that they are going to use the same documents.

JUDGE LAWSON: What about witnesses?

MR. WHITLOCK: The only thing I would add to the issue of documents is because obviously we filed an emergency motion to the Supreme Court which was denied yesterday, I would ask some leeway, giving to the fact I am going through trial for the first time, if something comes up y'all give me a certain amount of discretion to use that document. Obviously I am just now familiarizing myself with this. I did one short deposition up in Hart County and that was of the issuing magistrate that actually issued the warrants, I think it was probably a 20-minute deposition. That's my sum total knowledge of the case, other than what Bruce and I have just [p. 5] talked about informally.

JUDGE LAWSON: Well, you are going to be doing that between now and Thursday, I am sure.

MR. WHITLOCK: That's all I am going to be doing, I am sure.

JUDGE LAWSON: I would suggest that maybe by Wednesday afternoon you would have had an opportunity to cover what is in the file and if you see anything that falls under that category, you let Ms. Oakley know about it.

MS. OAKLEY: I will be in the office.

JUDGE LAWSON: You know, if you need to bring it back before the Commission for some special ruling, you can do that.

MR. WHITLOCK: Thanks.

JUDGE LAWSON: I am not going to give you a hard time about that.

MS. OAKLEY: Several of our witnesses are going to be by deposition. Do you want me to have those things read into the record or do you want me just to hand them in, referring to the segments we are going to be suing?

JUDGE LAWSON: I would think the latter.

MS. OAKLEY: Good. Take a lot less time.

JUDGE LAWSON: Do you agree with that?

[p. 6] MR. WHITLOCK: I do agree with that. I guess I would like to, obviously, just make a reference to specific areas of the deposition that we think are important.

JUDGE LAWSON: Sure, right. That will save a lot of time. Let's do that.

MR. MAY: Just as a matter of information, may I inquire, do you, the two of you, have all of the original depositions?

MS. OAKLEY: No. That's the other problem. Of those that I have taken, I have Mr. Jordan's, I have the three women down in Fort Valley. I have not received the original of Ms. Moore's. The signature page was sent to her in mid August, Ms. Moore obviously didn't know

what to do with it, so we don't have it. It is very, very short. I don't think there is any problem with what is in it.

With regard to the sheriff and the two commissioners that they took the depositions of, the post office messed up our mail when we moved and we didn't get anything forwarded for three weeks. The depositions got held past that and I didn't get them until last Thursday. I have two of the signature pages I got yesterday when I was down [p. 7] there. The third one should be here soon, I can get them to the court reporter, but I don't think we are going to have the originals. All three of them are going to testify live. You have the copies for impeachment purposes, if we can stipulate using the copies, the two who corrected have very few corrections.

MR. WHITLOCK: I am going to ask for my information who is going to be live and who is going to be deposition.

MS. OAKLEY: Mr. Taylor, Ms. Willis, Sheriff Beckham, Deputy Sheriff Deese are live, that's it. Commissioner Bartlett, I forgot him. Bartlett, Taylor, Willis, Beckham and Deese.

By deposition will be Ms. Moore, Mr. Jordan, Ms. Clark, Ms. Lamb and the Sims. They are all fairly short depositions.

JUDGE LAWSON: Who are you going to have live?

MR. WHITLOCK: Probably just the judge. I don't know, again, I am going to talk with her today and

see if there is anybody. When we did the pretrial order, the only person I was aware of would be her testifying.

JUDGE LAWSON: Any other potential live [p. 8] witnesses?

MR. WHITLOCK: Other potential live witnesses are perhaps her husband, perhaps it would be short depositions of people who actually experienced her courtroom, who have had good results there. I am going to talk with her today about that. I will let Mary Ann know as soon as I know. They wouldn't be long if they are live testimony.

MR. MAY: You are talking about deposing people between now and Thursday?

MR. WHITLOCK: No, actually bringing in live witnesses.

MS. OAKLEY: She is the only one on the list at this point.

MR. WHITLOCK: Right, she is the only one on the list at this point.

JUDGE LAWSON: How long do you think it is going to take to present this?

MS. OAKLEY: Depending on the length of the cross-examination, if the depositions are any indication, it may go more than a day. What I have I can probably do in three or four hours at the most.

JUDGE LAWSON: So you think we will be here Friday?

[p. 9] MR. WHITLOCK: I don't think so. I don't cross-examine as long as Bruce. If I could, I would; but I just sort of run out of things to talk about.

JUDGE LAWSON: What else do we need to do now?

MR. MAY: Judge, there is one thing that I just think for record purposes we might want to just see if counsel would be willing to stipulate.

As you all know Mr. James, the chairman of the Commission, issued an order sometime back designating Judge Lawson as the presiding judge in this matter. At that time, unfortunately, the rules of this Commission did not permit that. The rules required that the chairman preside at all formal hearings. Subsequent to that, when we realized that, we got the Supreme Court to amend that rule to permit the chairman to designate one of the judicial members of the Commission to serve as presiding judge at a formal hearing. It is my judgment that that is simply a procedural change and wouldn't make any substantive difference anyway.

For the purpose of the record, I think, Judge, it would be helpful to have counsel stipulate [p. 10] they have no objection to your presiding in this matter, under the circumstances I have just described.

MS. OAKLEY: You think I am going to sit here and tell Judge Lawson I am not going to let him preside? We have no objections whatsoever, in fact I think it is more efficient.

MR. WHITLOCK: We have no objections. I will state on behalf of my client apparently there was an

informal hearing where things were said between the Judge and Judge O'Neal and in candor of court, I would tell you she is pushing me very hard to ask for recusal of members of the Commission, the chairman, et cetera.

I don't anticipate doing that but it is ultimately, I guess, her choice on that matter. That's something that I really need to discuss with Bruce and haven't had a chance to do it. I have no problem with your Honor presiding under the new amended rules.

JUDGE LAWSON: Okay. Do you anticipate filing a recusal motion between now and Thursday?

MR. WHITLOCK: Only if –

JUDGE LAWSON: She insists.

MR. WHITLOCK: – she insists, that's [p. 11] right. I hesitate to even bring that up, but nevertheless I think I need to say it.

JUDGE LAWSON: I am glad to hear about it. If you file it, we will just have to deal with it.

What else?

MS. OAKLEY: I have nothing else. I think many of the facts in this case there is no question about; there are some disputed facts but I think most of them, the documents are certainly there. The real problem is the interpretation of them and I trust we are going to be permitted to make opening statements and arguments because I think that is critical.

JUDGE LAWSON: Sure, sure, sure.

* * *

[p. 13] MR. WHITLOCK: Are there time limits, is it fairly informal, given ten to 20 minutes for an opening statement, something along that line?

JUDGE LAWSON: As much time as you [p. 14] reasonably want.

MR. WHITLOCK: I didn't see any hard and fast rules.

JUDGE LAWSON: No.

MR. MAY: Judge, I wonder if you mind inquiring if the statement of the issues are substantially agreed upon, are there any differences between y'all with respect to the written statement of the issues that you submitted? I think Mr. Harvey basically said he agreed with the issues you had adopted.

MS. OAKLEY: I framed them in light of the allegations, trying to keep it as consistent as possible. I don't think there is going to be a problem.

JUDGE LAWSON: Well, what else?

MS. OAKLEY: I want to make sure you have copies of all the documents.

MR. WHITLOCK: I believe I have copies of all the documents. I don't know if there was an initial investigative reporter by Ogden or not, if I would even be entitled to that kind of information.

MS. OAKLEY: You have it. It wasn't a report, it was a compendium of interviews with the witnesses.

Bruce did have that because he has [p. 15] attached a couple of them to depositions.

MR. MAY: Just for your information, the rules provides that the Commission is obligated to provide to the respondent judge copies of all statements, interviews, any kind of document of that nature. We are not required to provide the full investigative report or any communications between the Commission and me or us and the Commission counsel, whatever. I believe all of that is what was provided to Judge O'Neal way back. In fact, we are required to do it within 15 days of filing the formal charges and I did it. As far as I know she has everything.

MS. OAKLEY: If you find you are missing any other documents, just give me a call and we will fax them to you.

(Prehearing conference concluded.)

Excerpt From Formal Hearing Transcript

* * *

[p. 14] motion for continuance.

JUDGE LAWSON: At some point, counsel and counsel's client must assume responsibility for their own welfare in any proceeding. The record in this case plainly shows that this hearing was going to be held.

It may well be that Judge O'Neal has a very serious complaint to make against Mr. Harvey through the disciplinary committee of the State Bar, but I cannot see that she has any complaint with this Commission about not having notice that this hearing was going to be held, and I cannot see that your law firm did not have notice that this Commission was going to be held.

Let me ask you this, if the matter were continued, is Judge O'Neal willing to take a leave of absence from office?

MR. WHITLOCK: Judge, do you have an approximate time frame of what we are going to be talking about?

JUDGE LAWSON: Listen, we are ready now. You are the one that has a problem with the time frame. The last time I talked to [p. 15] Mr. Harvey, he told me he was leaving, that the murder trial in which he is involved now in McDonough is going to conclude – take the rest of this week and possibly next, then he is scheduled to proceed before a federal judge here in Atlanta with a trial that is going to take at least four weeks, and so on ad infinitum. He indicated to me it might be 18 months before he was ready to proceed.

MR. WHITLOCK: Judge, if that is what he indicated to you, I do not think that is correct.

JUDGE LAWSON: Maybe not.

MR. WHITLOCK: As I think Mr. Harvey in conversations with your Honor indicated, we have had two death cases this month, the Kesserling case in Cobb and the one in Henry. The Kesserling case in Cobb was tried twice because of a mistrial, now we are involved in a death penalty case in Henry County, which they will indicate the death or innocence part of its probably tomorrow, which would give another two days for sentencing.

You are right. We started a securities fraud case this coming Monday, we are [p. 16] supposed to. The Baxley case in front of Judge Tidwell, federal court. That case involves 125,000 pages of documents. It involves 42 bankers boxes full of documents that the FBI set a special room of the courthouse off for us to go through.

That is a case that has been pending for a long time and is a case that Judge Tidwell has indicated he wants to go to trial, and the only way I assume we would be severed out of that case were if our trial in McDonough were still going on and the judge made the decision to sever our client out because it is a multidefendant case, I think six to eight defendants involved in the case. Again, it is 125,000 pages of documents.

We also two weeks ago, three weeks ago as your Honor is aware, tried the very large 50 kilo cocaine case, largest bust in the state of Georgia. To say that we have been overwhelmed with three attorneys, one paralegal

and no secretary is an understatement. That is not the Commission's fault, I am not indicating that to the [p. 17] Commission. I am just saying I have done everything I can reasonably do to be prepared.

(Conference between witness and counsel.)

JUDGE LAWSON: Mr. Whitlock, gave me your attention here.

First of all, you have not answered the question I asked you about the Judge's willingness to take a leave of absence. That was a question propounded by me. I have not discussed that with any of the members of the Commission. I do not know if the Commission is willing to accept that if she is willing to do that.

Suppose we take a five-minute recess, you discuss that with Judge O'Neal, the Commission will discuss it and we will come back and see where we are.

MR. WHITLOCK: Thank you. Judge.

(A recess ensued.)

(Whereupon, Michael Hauptman has joined.)

JUDGE LAWSON: Mr. Whitlock has your client reached a decision?

MR. WHITLOCK: Yes, she has. She has [p. 18] indicated to me that she does not want to voluntarily step down to take a leave of absence to allow time for Mr. Harvey to be here, she indicated she does not want to do that if she has to take a leave of absence.

JUDGE LAWSON: Let the record reflect that the Commission has decided to grant a continuance only on

that basis. We are willing to continue the matter if she is willing to step down on an indefinite basis until this matter is concluded.

MR. WHITLOCK: Judge, I just let the record reflect she has indicated to me she does not want to take a leave of absence.

JUDGE LAWSON: Very good. Are there any other preliminaries?

MR. WHITLOCK: None that I am aware of, Judge.

Judge, I would just point out that Michael Hauptman has graciously agreed to come here and try to assist me. I called him yesterday afternoon and I expect that he will perhaps cross-examine some of the witnesses because he is an attorney who has deposed several of the witnesses.

* * *